



## NIXON PEABODY LLP

ATTORNEYS AT LAW

Suite 900  
401 9th Street, N W  
Washington, D C 20004-2128  
(202) 585-8000  
Fax (202) 585-8080

Veronica M. Ahern  
Direct Dial. (202) 585-8321  
E-Mail vahern@nixonpeabody.com

RECEIVED

SEP 25 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

September 25, 2003

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: Docket Nos. 96-45 and 97-21  
Request for Review of USAC Decision  
Filer 499ID:818102  
Att: Wireline Bureau

Dear Ms. Dortch:

Equant Inc. ("Equant"), by its attorneys, hereby requests review of the decision of the Universal Service Administrative Company ("USAC") rejecting Equant's revision of a FCC Form 499-A for the period January 1-December 31, 1999 (See Attachment A). This Form 499-A was originally filed in April 2000 by Equant's predecessor in interest, Equant Network Services, Inc. ("ENS").<sup>1</sup> USAC rejects the revision because it was not filed within one year of the original submission. Equant herein appeals USAC's rejection directly to the Federal Communications Commission ("FCC" or "Commission") pursuant to Section 54.722 of the Commission's rules.<sup>2</sup>

**Background**

In 2000, Equant Network Services was a private interstate telecommunications provider offering services only on a non-common carrier basis. In April 2000, ENS filed a Telecommunications Reporting Worksheet (Form 499-A) that included on Line 412

<sup>1</sup> On December 31, 2001, ENS was merged with Equant Inc.

<sup>2</sup> 47 C.F.R. § 54.722.

No. of Copies rec'd  
List A B C D E

Marlene Dortch  
September 25, 2003  
Page 2

approximately \$129 million of off-shore revenue, that is, revenue derived from calls that both originate and terminate in foreign points and do not transit the U.S. That revenue should have been recorded on Line 418 (non-telecom service revenue) since it was for non-U.S.-based revenues. In other words, ENS made a \$129 million mistake.

In June 2003, Equant, ENS's successor in interest, received a "demand" letter from a Private Collection Agency, seeking \$350,006.15 in regulatory fees and penalties based upon the April 2000 Form 499-A. Equant investigated the matter and determined that the 2000 Form 499-A was incorrect in that it included approximately \$129 million of foreign revenue that should not have been included, and that was used to calculate the regulatory fee. On August 25, 2003, Equant, on behalf of ENS, filed a revised Form 499-A for the year 2000. On August 27, 2003 USAC rejected the revised Form 499-A because it was not filed within one year of the original submission.<sup>3</sup>

#### **Request for Review**

Equant requests FCC review of the USAC rejection pursuant to Section 54.722 of the Commission's rules for two reasons. First, the mistake made by ENS was understandable, given the lack of clear direction in the 2000 Form 499-A. Telecommunications carriers were directed to include "international calls that both originate and terminate in foreign points" in revenues reported on Line 412. No distinction is made, on the Form or in the instructions, between traffic that does not transit the United States and traffic that does. ENS followed the directions on the Form and included over \$129 million in international revenues on Line 412, revenues that had been derived from traffic that did not transit the U.S. This revenue should have been included in Line 418, but there were no directions or instructions that would have led a reasonable person to think so. This lack of clarity was the cause of ENS error.

Moreover, the unclear nature of the Form is evidenced by a subsequent specific correction. Now, the instructions for Form 499-A clearly state:

Line 418 should include revenues from the telecommunications services provided in a foreign country where the traffic does not transit the United States or where the carrier is providing service as a foreign carrier, i.e. a carrier licensed in that country.<sup>4</sup>

---

<sup>3</sup> Simultaneous with this request for review of the USAC rejection, Equant has paid regulatory fees and penalties based upon the correct Form 499-A amount and has requested that the Office of the Managing Director accept these amounts as full payment of the ENS Year 2000 regulatory fees, subject to adjustment for overpayment (See Attachment B)

<sup>4</sup> 2003 Form 499-A, Instructions, p.22.

Marlene Dortch  
September 25, 2003  
Page 3

Thus, the Commission has recognized that its previous instructions were imperfect and could reasonably have been construed as they were by ENS. This reason is alone sufficient to allow Equant, on behalf of ENS, to revise its incorrect Form 499-A.

A second reason to grant review of the USAC decision is that a summary rejection based upon an arbitrary schedule is, in these circumstances, patently unfair and egregious. USAC summarily dismissed the revised Form 499-A for failure to file a correction within one year. However, Equant was unaware within one year of the submission that the error had been made. Only more than three years after the filing was it brought to Equant's attention (through a "demand" for regulatory fees), that the April 2000 filing was incorrect.<sup>5</sup> We appreciate that administrative convenience warrants adherence to a schedule in order to assure that universal service contributions and cost recovery payments do not have to be recalculated over and over again. However, administrative convenience must bow to fairness in this limited circumstance when the error was unknown for three years and when the error itself was as a result of unclear instructions. Moreover, there will be no impact on the administration of the universal service support mechanisms. There will be no need to recalculate the contribution to universal service, because that amount is not calculated based on non-U.S. revenues. There may be some recalculation of cost recovery payments, but this is a minimal inconvenience and not worthy of summary rejection.

For these reasons, Equant urges the Commission to review the decision of the Universal Service Administrative Company and allow Equant, on behalf of its predecessor company, ENS, to revise its Form 499-A for the period January 1 to December 31, 1999.

Respectfully submitted,

Equant Inc.

By:   
Veronica M. Ahern  
Its Attorney

Attachment A: USAC Letter  
Attachment B: Equant Fee Letter

---

<sup>5</sup> Apparently, despite Equant's having updated both its CORES filing and its subsequent Form 499-As, correspondence with ENS was repeatedly sent to an outdated address.

NIXON PEABODY LLP

Marlene Dortch  
September 25, 2003  
Page 4

cc: Lisa Tubbs, USAC  
Claudette Pride, OMD  
Jim Lande, WTB



A



## Universal Service Administrative Company

August 27, 2003

Equant Network Services, Inc.  
12490 Sunrise Valley Dr,  
Reston, VA 20196

Filer 499 ID: 818102

Attn: Monique R. Crawford, Regulatory Affairs

RE: 2000 Form 499-A Revision Rejection

The Universal Service Administrative Company (USAC) has completed a review of the Revised FCC Form 499-A that you submitted for the purpose of revising revenue reported by Equant Network Services, Inc. for the period January 1 – December 31, 1999. Based on the information provided, we are unable to accept the revision because it was not filed within one year of the original submission.

USAC recognizes that you may disagree with our decision. **If you wish to file an appeal, your appeal must be postmarked no later than 60 days after the date of this letter.**

In the event that you choose to appeal the decision, you should follow these guidelines:

- Write a "Letter of Appeal to USAC" explaining why you disagree with this Revised Form 499-A Rejection letter and identify the outcome that you request;
- Mail your letter to:  
Letter of Appeal  
USAC  
2120 L Street, NW, Suite 600  
Washington, DC 20037
- Appeals submitted by fax, telephone call, and e-mail **will not** be processed.
- Provide necessary contact information. Please list the name, address, telephone number, fax number, and e-mail address (if available) of the person who can most readily discuss this appeal with USAC.
- Identify the "Legal Reporting Name" and "Filer 499 ID."
- Explain the appeal to the USAC. Please provide documentation to support your appeal.

- Attach a photocopy of this Revised Form 499-A Rejection decision that you are appealing.

USAC will review all "letters of appeal" and respond in writing within 90 days of receipt thereof.

The response will indicate whether USAC:

- (1) agrees with your letter of appeal, and approves an outcome that is different from the Revised Form 499-A Rejection Letter; or
- (2) disagrees with your letter of appeal, and the reasons therefor.

If you disagree with the USAC response to your "letter of appeal," you may file an appeal with the FCC within 60 days of the date USAC issued its decision in response to your "Letter of Appeal." The FCC address where you may direct your appeal is:

Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Room TW-A325  
Washington, DC 20554

Please be sure to indicate the following information on all communications with the FCC:  
"Docket Nos. 96-45 and 97-21."

**In the alternative**, you may write and send an appeal letter directly to the Federal Communications Commission (FCC), and bypass USAC. Your letter of appeal to the FCC must explain why you disagree with the USAC decision. You are also encouraged to submit any documentation that supports your appeal. The FCC rules governing the appeals process (Part 54 of Title 47 of the Code of Federal Regulations 54.719 – 54.725) are available on the FCC web site ([www.fcc.gov](http://www.fcc.gov)).

If you have questions or concerns regarding this letter, please contact Lisa Tubbs at (973) 884-8116 or Christy Doleshal at (973) 560-4428.

Sincerely,

**USAC**



**B**





# NIXON PEABODY LLP

ATTORNEYS AT LAW

Suite 900  
401 9th Street, N.W.  
Washington, D.C. 20004-2128  
(202) 585-8000  
Fax: (202) 585-8080

Veronica M. Ahern  
Direct Dial. (202) 585-8321  
E-Mail [vahern@nixonpeabody.com](mailto:vahern@nixonpeabody.com)

September 25, 2003

Office of Managing Director  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Regulatory Fee Request

Dear Sir or Madam:

Equant Inc. ("Equant"), by its attorneys, hereby requests that the Office of Managing Director accept the amount of \$71,628.71, less \$21,471.02 paid by Equant through the offset program of the Department of Treasury, as full payment of regulatory fees and penalties owed by Equant for the year January 1 to December 31<sup>st</sup>, 1999 and instruct the Department of Treasury to end all collection actions. Equant filed a Remittance Form 159 and wired \$71,628.71 to the Mellon Bank on September 23, 2003. (See Attachment A)<sup>1</sup> Equant asks that the Office of Managing Director accept this payment as payment in full, regardless of whether the simultaneously filed Request for Review of a decision of the Universal Service Administrative Company ("USAC") is granted. (See Attachment B). Equant makes these requests as the successor in interest to Equant Network Services ("ENS").<sup>2</sup>

## **Background**

In 2000, Equant Network Services was a private interstate telecommunications provider offering services only on a non-common carrier basis. In April 2000, ENS filed a Telecommunications Reporting Worksheet (Form 499-A) that included on Line 412

---

<sup>1</sup> After paying \$71,628.71, Equant learned that the total amount of the Treasury Department off-set was \$21,471.02. Equant asks for refund of that amount.

<sup>2</sup> On December 31, 2001, Equant Network Services, was merged with Equant Inc., the surviving entity.

Marlene Dortch  
September 25, 2003  
Page 2

approximately \$129 million of off-shore revenue, that is, revenue derived from calls that both originate and terminate in foreign points and do not transit the U.S. That revenue should have been recorded on Line 418 (non-telecom service revenue) since it was for non-U.S.-based revenues. In other words, ENS made a \$129 million mistake. We understand that other carriers made the same miscalculation in 2000, a result of an ambiguous instruction sheet that subsequently was clarified by the FCC.

As required, ENS paid its universal service contribution and cost recovery payment based on the revenues shown in the incorrect Form 499-A. However, ENS did not pay regulatory fees because it operated only as a private carrier, not subject to Title II regulation. ENS believed that such private carriers were exempt from regulatory fees.

In June 2003, Equant, ENS's successor in interest, received a "demand" letter from a Private Collection Agency, seeking \$350,006.15 in regulatory fees and penalties based upon the April 2000 Form 499-A. Equant investigated the matter and determined that the 2000 Form 499-A was incorrect in that it included approximately \$129 million of foreign revenue that should not have been included, and that was used to calculate the regulatory fee. On August 25, 2003, Equant, on behalf of ENS, filed a revised Form 499-A for the year 2000. This revised Form 499-A reclassified the \$129 million from Line 412 to Line 418 and, as a result, significantly reduced the amount of owed regulatory fees. On August 26, 2003, representatives of Equant met with staff from the Office of Managing Director and the Wireline Bureau to discuss how to correct this matter and end further collection efforts. On August 27, 2003 USAC rejected the revised Form 499-A because it was not filed within one year of the original submission.<sup>3</sup>

### **Request**

Equant has paid regulatory fees and penalties based on the corrected Form 499-A in the amount of \$71,628.71, including a 25% penalty. Equant asks the Managing Director to rule that this amount, less the Treasury Department offset amount of \$21,471.02, satisfies Equant's obligation and to direct the Department of the Treasury to end further collection efforts pursuant to the Debt Collection Improvement Act. Equant asks for a refund of the \$21,471.02. Further, Equant asks the Managing Director to take this action whether or not the Wireline Bureau overrules USAC and accepts the revised Form 499-A. As described in our Request for Review, the instructions for completing the 2000 Form 499-A were unclear, which led to the mistake made by ENS. (The instructions have since been corrected to make the classification of off-shore revenue clear.) Equant should not be required to pay regulatory fees greatly in excess of what is legitimately owed because the instructions to Form 499-A were misleading. Equant

---

<sup>3</sup> Simultaneous with this request for OMD action, Equant has sought review of the USAC decision from the Wireline Bureau pursuant to Section 54.722 of the Commission's rules (Attachment B).

Marlene Dortch  
September 25, 2003  
Page 3


expects that the Wireline Bureau will overrule USAC and allow revision of the 2000 Form 499-A. If it does not, however, fairness requires that the Managing Director permit Equant to pay regulatory fees based upon the correct calculations, that is, those that do not include revenues from off-shore traffic that did not transit the United States.

For these reasons, Equant, pursuant to Sections 0.231(a) and 1.1166 of the Commission's rules, requests that the Managing Director accept \$50,157.69 (\$71,628.71 less \$21,471.02) (including 25% penalty) as payment in full of the year 2000 Equant regulatory fees, direct the Department of Treasury to end collection action, and refund \$21,471.02 to Equant.

Please contact the undersigned if you have any questions.

Respectfully submitted,

Equant Inc.

By:   
Veronica M. Ahern  
Its Attorney

Attachment A: Form 159  
Attachment B: Equant Request for Review

cc: Claudette Pride, OMD  
Jim Lande, Wireline Bureau